

DIRECTOR'S REPORT AND RECOMMENDATION

Minor Communication Utilities

Introduction

Mayor Greg Nickels recently announced plans to amend Seattle's telecommunication regulations to prohibit new wireless communication facilities in single family neighborhoods. At the Mayor's direction, the Department of Design, Construction and Land Use (DCLU) has prepared legislation that would prohibit minor communication utilities (cellular antenna) in Single Family and Residential Small Lot zones, except in instances where there is no alternative for providing service, as required by federal regulations.

Background

On September 23, 2002, the City Council approved legislation that amended Land Use Code regulations governing telecommunication facilities and devices. The legislation addressed the location and placement of such facilities and devices, reviewed processes based on the type of device and corresponding zones, height limits, mitigation of visual impacts, and proximity to landmarks and/or historic structures. In addition, the legislation addressed changes made to federal and state laws, including the Federal Telecommunications Act (1996), Federal Communications Commission Rules (1997), and Washington State Legislation (RCW 43.21C.0384).

The most significant change of the September 23, 2002 legislation, with respect to Single Family zones, was that many proposals that would have previously required Council Conditional Use approval were subsequently allowed by Administrative Conditional Use. At the same time, stricter visual impact standards were also implemented. This change may have unintentionally created an incentive for cellular providers to locate in Single Family zones. Since the September 23, 2002 provisions went into effect, there has been a noticeable increase in the number of proposals to locate minor communication utilities in Single Family zones. These proposals have generally come in one of five forms:

1. Attachments to City Light poles;
2. Antennae attached to existing major or minor communication utility towers;
3. Antennae located on non-single family structures (churches, apartment buildings, schools, etc.);
4. Antennae attached to a proposed monopole on a lot that contains non-single family structures; and
5. Antennae located on or within a structure.

Permit applications to allow cellular antenna in Single Family zones have resulted in the formation of several neighborhood opposition groups, such as Residents Against Cell Towers in our Neighborhoods (REACTION). These organized groups have articulated concerns that current proposals for minor communication utilities will have negative

visual and neighborhood character impacts, among others. The proposed legislation is a response to preliminary evaluations of many cell antenna applications in Single Family zones, and a response to citizens' concerns.

Analysis

The following analysis of the proposal examines the differences between existing and proposed regulations, including the anticipated effects of the proposed amendments.

Current Regulations: Current regulations allow four permitting options for the placement of minor communication utilities in Single Family and Residential Small Lot zones. First, minor communication utilities that are attached to existing major and minor communication utilities (i.e. transmission towers and monopoles), or minor communication utilities that are contained entirely within a non-single family structure, are Permitted Outright.

Second, minor communication utilities that are attached to City Light poles require approval from the City Light Superintendent. In such instances, the DCLU Director issues a recommendation (not an actual permit) to the Superintendent based on Administrative Conditional Use criteria. Third, minor communication utilities that are attached to a monopole on a lot that doesn't contain a single family structure (i.e. located on a church, school or apartment building), or minor communication utilities that are attached to a structure that is not a single family residence (i.e. a church, school or apartment building) require Administrative Conditional Use approval. Fourth, in order for a minor communication utility to be located, in any way, on a vacant lot or a lot that contains a single family residence, a Council Conditional Use approval is required.

Administrative Conditional Use approvals are currently determined by whether or not the proposal meets the criteria contained in existing subsection 23.57.010 C.2. The criteria requires adherence to visual impact standards and that *"the facility and location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing service."* In this situation, cellular providers make the determination of what constitutes "effectively providing service." Such a determination is not subject to DCLU review or approval.

The only existing process that requires DCLU to verify a wireless provider's service need is the Council Conditional Use review, which is required for an antenna to be located in a Single Family or Residential Small Lot zone on a vacant lot or on a lot that contains a single family residence. In addition to consideration of visual impacts, the applicant must demonstrate by technical studies that *"a facility at the site proposed is necessary to close an existing significant gap or gaps in the availability of a wireless carrier's communication service or to provide additional call capacity and that, absent the proposed facility, remote users of a wireless carrier's service are unable to connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication."* This provision is commonly referred to as the "safe harbor" provision.

Since its adoption on September 23, 2002, the safe harbor provision has never been used – no Council Conditional Use applications have been applied for. During the same time period there have been approximately 30 Administrative Conditional Use applications¹ for minor communication utilities in Single Family zones. About two thirds of those applications have been for attachments to City Light poles and the remaining one third have been for utilities proposed on transmission towers, rooftops of nonconforming multifamily structures, or church sites. In addition, seven Council Conditional Use applications that were applied for prior to the September 23, 2002 legislation were changed to Administrative Conditional Use applications after adoption of the legislation.

Proposed Amendments: The proposed amendments would prohibit minor communication utilities in Single Family and Residential Small Lot zones, except when:

1. The proposed minor communication utility is located entirely within a structure that is not a single family residence, or
2. The applicant can demonstrate that there is no alternative for providing service.

Specifically, adoption of the proposed amendments would subject all applications for minor communication utilities in Single Family and Residential Small Lot zones to a discretionary and appealable Special Exception review process². Similar to the existing “safe harbor” provision used in the review of Council Conditional Use applications, this process would require a demonstration of the following criteria through technical studies:

1) the facility is for commercial mobile service, unlicensed wireless services, fixed wireless service, or common carrier wireless exchange access service as defined by applicable federal statutes or regulations; and

2) a facility at the site proposed is necessary to close an existing significant gap or gaps in the availability of a wireless carrier’s communication service and that, absent the proposed facility, remote users of a wireless carrier’s service are unable to connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication; and

3) that the facility and the location proposed is the least intrusive facility at the least intrusive location consistent with effectively closing the service gap. In considering the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic and the displacement of residential dwelling units in a residential zone.

The proposed regulatory approach is consistent with the Federal Telecommunications Act, Federal Communications Commission Rules, and with regulatory approaches taken by other jurisdictions in the northwest. Review of regulations applicable in Washington (Bellevue, Redmond, Kirkland, Medina, Tacoma, Olympia, and Bellingham) as well as Portland, Oregon, found that locating cellular antenna in Single Family zones is the last option, if even an option at all. The effect of the proposal, similar to regulations from

other jurisdictions, is to support a general preference for the placement of minor communication utilities, as follows:

1. Industrial zones (most desirable)
2. Downtown zones
3. Commercial zones
4. Multifamily zones
5. Single Family zones on arterial streets
6. Single Family zones on non-arterial streets (least desirable)

The following chart summarizes the differences between existing and proposed minor communication utility regulations in Single Family and Residential Small Lot zones:

MINOR COMMUNICATION UTILITIES IN SINGLE FAMILY AND RESIDENTIAL SMALL LOT ZONES		
<u>Type of Applications</u>	<u>Existing Provisions</u> Approvals Required	<u>Proposed Amendments</u> Approvals Required
Antenna attached to existing major or minor communication utility towers	Permitted Outright	Not permitted, except where there is a significant gap in service, per 23.57.009
Antenna located entirely within a structure that is not a single family residence	Permitted Outright	Permitted Outright
Antenna attached to a proposed monopole on a lot that contains a structure that is not a single family residence	Administrative Conditional Use	Not permitted, except where there is a significant gap in service, per 23.57.009
Antenna attached to structure that is not a single family residence	Administrative Conditional Use	Not permitted, except where there is a significant gap in service, per 23.57.009
Attachments to City Light poles	Recommendation to City Light based on single family Administrative Conditional Use criteria	Not permitted, except where there is a significant gap in service, per 23.57.009
Antenna located on a vacant lot or on a lot that contains a single family residence	Council Conditional Use, where there is a significant gap in service, per 23.57.009	Not permitted, except where there is a significant gap in service, per 23.57.009

The primary difference between the existing and proposed regulations governing minor communication utilities is that the proposed amendments would require cellular providers

to demonstrate a verifiable and immediate need for service in order to be located in a Single Family or Residential Small Lot zone. In order to prove that a verifiable and immediate need for service exists, cellular providers would have to demonstrate by technical studies that a significant gap in service³ would exist without a facility at the proposed location. To verify the accuracy of studies provided by the applicant, the Director will have the option of hiring a third-party reviewer, paid for by the applicant.

Applicable Comprehensive Plan Goals and Policies

Seattle's Comprehensive Plan outlines general goals and specific policies for Land Use Code development in all zones, as well as guidelines for telecommunications facilities. According to the plan, "Policies should be read as if preceded by the words 'it is the City's general policy to'..." The following policies are applicable to the proposed Land Use Code amendment.

Policy L357 ... The City shall also provide for the location of minor communication utilities and accessory communication devices that provide telephone and other communication functions.

Policy L362 Minor communication utilities shall be developed in such a manner as to minimize impacts on nearby areas. Consideration shall be given to the following criteria: visual impacts, proximity to schools, neighborhood compatibility, land use and other impacts.

Recommendation

The proposed amendments are consistent with City policies to minimize the impacts of minor communication utilities on nearby areas. In discouraging the placement of minor communication utilities in Single Family and Residential Small Lot zones, the City will appropriately and effectively minimize impacts on surrounding areas, while maintaining compliance with applicable state and federal regulations.

DCLU recommends approval of the proposed amendments.

¹ This estimate takes into account active DCLU applications and projects currently in the process of applying to DCLU. It should also be noted that applications for attachments to City Light poles are ultimately reviewed by the City Light Superintendent. However, DCLU issues a recommendation to the City Light Superintendent based on Administrative Conditional Use criteria.

² In determining compliance with the Special Exception criteria, the Director will have the option of hiring a third-party reviewer (a licensed radio frequency engineer), paid for by the applicant.

³ The term "significant gap in service" will be further defined in a Rule promulgated by the Director.